



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

BLUE RIDGE REGIONAL OFFICE

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**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO THE
UNITED STATES ARMY (OWNER)
AND
BAE SYSTEMS ORDINANCE SYSTEMS, INC. (OPERATOR)
FOR THE
RADFORD ARMY AMMUNITION PLANT
REGISTRATION NO. 20656**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and the United States Army (Owner) and BAE Systems Ordinance Systems, Inc. (Operator), regarding the Radford Army Ammunition Plant, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, applicable regulations and its permit.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Salem, Virginia.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

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4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" or "RFAAP" means the Radford Army Ammunition Plant, off State Route 114, near the City of Radford in Montgomery County Virginia, owned by the United States Army and operated by BAE Systems Ordinance Systems, Inc.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "Operator" means BAE Systems Ordinance Systems, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. The Operator is a "person" within the meaning of Va. Code § 10.1-1300.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
10. "Owner" means the United States Army. The Army is a "person" within the meaning of Va. Code § 10.1-1300.
11. "The Parties" means the Owner and the Operator.
12. "PCE" means a partial compliance evaluation by Department staff.
13. "Permit" means Title V Permit with an effective date of January 15, 2004, last amended on May 9, 2013 to operate a stationary source of air pollution under the Virginia Air Pollution Control Law and the Regulations and issued to the Owner.
14. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
15. "Va. Code" means the Code of Virginia (1950), as amended.
16. "VAC" means the Virginia Administrative Code.
17. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. The Owner owns the Facility and the Operator operates the Facility and the Facility is subject to the Permit.
2. On April 30, 2020, Department staff conducted a PCE in the form of a file review of reported deviations first reported in the Facility's Title V Semi-Annual Monitoring Report ("the Report") submitted on February 28, 2020 as well as email correspondence received on March 24, 2020. The following describes the staff's factual observations:
 - Attachment 2: Failure to Monitor, Keep Records or Report Form – the Owner/Operator reported that it had failed to report in the previous Title V SAMR submitted on August 27, 2019 the failure to conduct twelve weekly Method 22 visible emission observations during the months of March, April and May 2019 for the Greenline/Solvents Area.
 - Attachment 6: Deviations Not Reported in Previous Reporting Period – the Owner/Operator reported that it had failed to conduct twelve weekly Method 22 visible emission observations during the months of March, April and May 2019 for the Greenline/Solvents Area.
3. Condition XII.C.3.b.(3) of the Permit requires that the permittee shall submit the results of monitoring contained in any applicable requirement to DEQ no later than March 1 and September 1 of each calendar year. This report must be signed by a responsible official, consistent with 9 VAC 5-80-80 G. (Note that much of the recordkeeping required by this permit also serves as required periodic monitoring to determine emissions compliance and therefore needs to be addressed in the periodic reports.) The details of the reports are to be arranged with the Director, West Central Regional Office. The reports shall include:
 - b. All deviations from permit requirements. For purposes of this permit, deviations include, but are not limited to: (3) Failure to meet monitoring, recordkeeping, or reporting requirements contained in this permit.
4. Condition IX.B.1 of the Permit requires that each emissions unit with a visible emissions requirement in the sections titled "Fuel Burning Equipment Requirements" and "Process Equipment Requirements" in this permit, as well as other emissions units as arranged with the Director, West Central Regional Office, shall be observed visually at least once each calendar week in which the emissions unit operates. If visible emissions observations conducted for a particular stack during twelve (12) consecutive weeks show no visible emissions, the permittee may, with DEQ concurrence, reduce the monitoring frequency to once per month for that particular stack. Any time the monthly visible emissions observations show visible emissions, or when requested by the DEQ, the monitoring frequency shall be increased to once each calendar week. The visual observations shall be conducted using 40 CFR 60 Appendix A Method 22 techniques (condensed water vapor/steam is not a visible emission) for at least a brief time to only identify the presence of visible emissions, unless the unit is monitored by a 40 CFR 60 Appendix A continuous opacity monitor. Each emissions unit in the Method 22 technique observation having visible emissions shall be evaluated by conducting a 40

CFR 60 Appendix A Method 9 visible emissions evaluation (VEE) for at least six (6) minutes, unless corrective action is taken that achieves no visible emissions.

5. On May 13, 2020, the Department issued NOV # ABRRO001505 to the Owner/Operator for the violations listed in paragraph, C(3) and C(4), above.
6. On May 27, 2020, Department enforcement staff and representatives of the Owner/Operator conducted a conference call to discuss the NOV and the Owner/Operator submitted a formal written response to the Department on June 24, 2020.
7. Based on the April 30, 2020 PCE and the formal written response received by the Department on June 24, 2020, the Board concludes that the Owner/Operator violated the Permit, as described in paragraph C(3) and C(4), above.
8. The Owner/Operator has submitted documentation that verifies the violations described in paragraph C(3) and C(4), above, has been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders the Operator, and the Operator agrees to pay a civil charge of **\$20,000** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The Operator shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the Owner shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Parties for good cause shown by the Parties, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the Parties admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Parties consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Parties declare they have received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the Parties to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Parties shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Parties shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Parties shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and the Parties.
- 11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after the Parties have completed all of the requirements of the Order;
 - b. The Parties petition the Director or his designee to terminate the Order after they have completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Parties.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Parties from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Nothing herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. Any requirement for payment or obligation of funds by a particular date established by the terms of this agreement shall be subject to the availability of funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted. If sufficient appropriations are not available and cannot be obtained, the U.S. Army will promptly inform the DEQ Regional Director.

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13. Any plans, reports, schedules or specifications attached hereto or submitted by the Parties and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
14. The undersigned representatives of the Parties certify that they are a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Parties to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Parties.
15. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
16. By their signatures below, the Parties voluntarily agree to the issuance of this Order.

And it is so ORDERED this 22 day of September, 2021.



Robert J. Weld, Regional Director
Department of Environmental Quality

------(Signature Pages Follow)-----

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The United States Army, RFAAP voluntarily agrees to the issuance of this Order.

Date: 15 SEP 21 By: _____

Russell A. Jones
Lieutenant Colonel, U.S. Army
Commander RFAAP

State of Virginia
City/County of Montgomery County

The foregoing document was signed and acknowledged before me this 15 day of
September, 2021, by LTC Russell A. Jones who is the Commander of the Radford Army
Ammunition Plant, on behalf of the United States Army, REAAP.

Pamela J. DiLoia
Notary Public

7930035

Registration No.

My commission expires: 1/31/2025
Notary seal:



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BAE Systems Ordinance Systems, Inc voluntarily agrees to the issuance of this Order.

Date: 9/15/2021 By: CK Johnson
Mr. Kirk Johnson
General Manager, RFAAP

State of VIRGINIA
City/County of MONTGOMERY

The foregoing document was signed and acknowledged before me this 15 day of
SEPTEMBER, 2021, by Mr. Kirk Johnson who is the General Manager for BAE Systems
Ordinance Systems, Inc. – RFAAP on behalf of the company.



Janette Davis Brown
Notary Public

7036057
Registration No.

My commission expires: 31 MAY 2022
Notary seal: